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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,132	11/17/2003	Phillip M. Adams	2456.2.8.2	1893

28049 7590 08/09/2005

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PARKSIDE TOWER  
SALT LAKE CITY, UT 84111

EXAMINER

NGUYEN, VAN H

ART UNIT PAPER NUMBER

2194

DATE MAILED: 08/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/715,132

**Applicant(s)**

ADAMS, PHILLIP M.

**Examiner**

VAN H. NGUYEN

**Art Unit**

2194

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/7/04</u> . | 6) <input type="checkbox"/> Other: _____  |

PD

### **DETAILED ACTION**

1. Claims 1-26 are presented for examination.
2. The cross reference related to the application cited in the specification must be updated (i.e., update the relevant status, with PTO serial numbers or patent numbers where appropriate, on page 1, lines 3-4). Correction is required.
3. Examiner requests that Applicant review the application carefully for informalities including typographical errors.

### ***Information Disclosure Statement***

4. The Applicants' Information Disclosure Statement, filed 04/07/04, has been received, entered into the record, and considered. See attached form PTO 1449.

### ***Double Patenting***

5. U.S.C. 101, Statutory Basis for Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

6. Rejection, 35 U.S.C. 101, Double Patenting

Claim 1 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1 of prior U.S. Patent No. 6,687,858 B1. This is a double patenting rejection.

Claim 2 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 2 of prior U.S. Patent No. 6,687,858 B1. This is a double patenting rejection.

Claim 3 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 3 of prior U.S. Patent No. 6,687,858 B1. This is a double patenting rejection.

Claim 4 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 4 of prior U.S. Patent No. 6,687,858 B1. This is a double patenting rejection.

Claim 5 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 5 of prior U.S. Patent No. 6,687,858 B1. This is a double patenting rejection.

Claim 6 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 6 of prior U.S. Patent No. 6,687,858 B1. This is a double patenting rejection.

Claim 7 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 7 of prior U.S. Patent No. 6,687,858 B1. This is a double patenting rejection.

Claim 8 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 8 of prior U.S. Patent No. 6,687,858 B1. This is a double patenting rejection.

Claim 9 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 9 of prior U.S. Patent No. 6,687,858 B1. This is a double patenting rejection.

Claim 10 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 10 of prior U.S. Patent No. 6,687,858 B1. This is a double patenting rejection.

Claim 11 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 11 of prior U.S. Patent No. 6,687,858 B1. This is a double patenting rejection.

Claim 12 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 12 of prior U.S. Patent No. 6,687,858 B1. This is a double patenting rejection.

Claim 13 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 13 of prior U.S. Patent No. 6,687,858 B1. This is a double patenting rejection.

Claim 14 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 14 of prior U.S. Patent No. 6,687,858 B1. This is a double patenting rejection.

Claim 15 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 15 of prior U.S. Patent No. 6,687,858 B1. This is a double patenting rejection.

Claim 16 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 16 of prior U.S. Patent No. 6,687,858 B1. This is a double patenting rejection.

Claim 17 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 17 of prior U.S. Patent No. 6,687,858 B1. This is a double patenting rejection.

Claim 18 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 18 of prior U.S. Patent No. 6,687,858 B1. This is a double patenting rejection.

Claim 19 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 19 of prior U.S. Patent No. 6,687,858 B1. This is a double patenting rejection.

Claim 20 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 20 of prior U.S. Patent No. 6,687,858 B1. This is a double patenting rejection.

Claim 21 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 21 of prior U.S. Patent No. 6,687,858 B1. This is a double patenting rejection.

Claim 22 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 22 of prior U.S. Patent No. 6,687,858 B1. This is a double patenting rejection.

Claim 23 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 23 of prior U.S. Patent No. 6,687,858 B1. This is a double patenting rejection.

Claim 24 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 24 of prior U.S. Patent No. 6,687,858 B1. This is a double patenting rejection.

Claim 25 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 25 of prior U.S. Patent No. 6,687,858 B1. This is a double patenting rejection.

Claim 26 is rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 26 of prior U.S. Patent No. 6,687,858 B1. This is a double patenting rejection.

### ***Conclusion***

7. Any inquiry or a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: (571) 272-2100.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VAN H. NGUYEN whose telephone number is (571) 272-3765. The examiner can normally be reached on Monday-Thursday from 8:30AM - 6:00PM. The examiner can also be reached on alternative Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Meng-Ai An can be reached on (571) 272-3756.

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The fax phone number for the organization where this application or proceeding is assigned is **571-273-8300**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

**Any response to this action should be mailed to:**

**Commissioner for patents**

**P O Box 1450**

**Alexandria, VA 22313-1450**

**MENG-AL T. AM**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 2100**